TEACHER RETIREMENT SYSTEM OF TEXAS

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Texas House Committee on Insurance

Request for Information on Interim Charge #1: SB 1264, which prohibits balance billing (surprise billing) and creates an arbitration system to settle balance bills. Evaluate the fiscal impact of the legislation on the Employees Retirement System of Texas and the Teacher Retirement System of Texas. Review costs to the systems and savings to employees and teachers.

FISCAL IMPACT OF SENATE BILL 1264 ON TRS HEALTH PLANS

TRS-ActiveCare provides health coverage for more than 440,000 active employees and their families, and it funds that coverage through a self-funded health plan model. The premiums paid by public school employees are combined with district funds (a minimum of $150 per employee per month) and state funds ($75 per employee per month) into a fund that makes up TRS-ActiveCare.

TRS-Care provides health care coverage for more than 230,000 retired educators and their families and is funded on a pay-as-you-go basis. TRS-Care is funded by a percentage of payroll, with 1.25% contributed by the state, 0.75% contributed by the employer, and 0.65% contributed by active employees. Retirees contribute a premium that varies based on Medicare status and number of dependents.

Senate Bill 1264 prevents an out-of-network emergency care, facility-based provider, out-of-network laboratory service, or an out-of-network diagnostic imaging service from balance billing patients in TRS-ActiveCare and TRS-Care. The bill requires mediation for participants in TRS health care programs for disputed out-of-network facility claims. For out-of-network physicians' charges, TRS and the physician will either settle claims in an informal teleconference or in arbitration. During the 86th Legislative Session, TRS estimated that the bill would have a significant impact on TRS health plan costs; however, important factors have played a role in mitigating the cost impact of the new law on TRS' self-funded health plans:

- The reduction in elective procedures due to the COVID-19 pandemic has meant that there are fewer health care services being performed since the law took effect that may have been eligible for arbitration or mediation. Providers may have also not been able to file requests during the early phases of the pandemic as they dealt with other challenges and were learning about the arbitration and mediation processes. Similar to what the Texas Department of Insurance described in their statewide report,[1] the volume of requests

[1] https://www.tdi.texas.gov/reports/documents/SB1264-preliminary-report.pdf

started increasing substantially in the summer of 2020. As of mid-April, there were 16 total requests for TRS-ActiveCare and TRS-Care Standard. By August, there were 282.

- TRS underwent a competitive procurement and selected new health plan administrators for its self-funded TRS-ActiveCare and TRS-Care plans. The new administrators have additional contracted providers in network, which is expected to result in a lower number of requests for arbitration or mediation from out-of-network providers going forward.

As of August 2020, TRS has experienced a lower-than-expected volume of requests for arbitration and mediation than initially projected, but the cost per settlement is higher than projected.

For TRS-ActiveCare Plans:

- TRS has resolved 167 cases and paid out a total of $110,000 in additional payments to providers.
- While the case volume remains low, on average, per case payments are higher than previously estimated by TRS.
- There are currently 85 cases pending with a total disputed amount of $490,000.

For TRS-Care Standard:

- TRS has resolved 17 cases and paid out $28,000.
- Case volume for TRS-Care also remains low, but similar to TRS-ActiveCare, average payments are higher than previously estimated by TRS.
- There are currently 13 cases pending with a total disputed amount of $31,000.

For TRS-Care Medicare Advantage:

- TRS has not received any cases.

Medicare members were already protected from balance billing. Providers treating Medicare members are generally required to accept payment in full as a condition of participating in Medicare and therefore cannot balance bill. While a small number of “non-participating” providers can bill an additional 15%, Medicare members are not exposed to catastrophic balance billing.

Medicare Advantage plans are regulated by the federal government. States set rules on the financial solvency of the insurers and basic licensing requirements, but otherwise federal laws preempt state law when it comes to the regulation of Medicare Advantage (see, for example, 41

CFR 422.402[2]). As such, Senate Bill 1264 is not applicable to Medicare advantage plans. TDI has communicated this on their website[3] and in rule-making.[4]

TRS estimated that the majority of the cost impact due to the law would result from arbitration; based on the lower than expected number of cases, that does appear to be the case. Arbitration accounts for 75% of cases for TRS-ActiveCare and 93% of cases for TRS-Care.

TRS is monitoring whether the transition to a new administrator with more extensive contract arrangements will reduce the projected cost impact of the new law and is evaluating the effect of COVID-19 on the utilization of health care services that would be eligible for arbitration and mediation.

[2] https://www.ecfr.gov/cgi-bin/text-idx?SID=11238cbd1d6fd44a16a788326cba7870&mc=true&node=se42.3.422_1402&rgn=div8
[3] https://www.tdi.texas.gov/news/2019/tdi12202019.html
[4] https://www.tdi.texas.gov/rules/2019/documents/20196172.pdf